

City Council Meeting Minutes

**August 18, 2015
City Hall, Council Chambers
749 Main Street
7:05 PM**

Call to Order – Mayor Muckle called the meeting to order at 7:00 p.m.

Roll Call was taken and the following members were present:

City Council: ***Mayor Robert Muckle, Mayor Pro Tem Hank Dalton
City Council members: Sue Loo, Ashley Stolzmann,
Chris Leh, Jay Keany and Council member Lipton
(arrived at 8:12 p.m.)***

Staff Present: ***Malcolm Fleming, City Manager
Heather Balser, Deputy City Manager
Kevin Watson, Finance Director
Dave Hayes, Police Chief
Kurt Kowar, Public Works Director
Aaron DeJong, Economic Development Director
Troy Russ, Planning & Building Safety Director
Scott Robinson, Planner II
Lauren Trice, Planner I
Nancy Varra, City Clerk***

Others Present: ***Sam Light, City Attorney***

PLEDGE OF ALLEGIANCE

All rose for the pledge of allegiance.

APPROVAL OF AGENDA

Mayor Muckle called for changes to the agenda and hearing none, moved to approve the agenda, seconded by Council member Stolzmann. All were in favor. Absent: Council member Lipton.

PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

John Wilson, Fire Chief, Louisville Fire Protection District, 895 Via Appia, Louisville, CO reported on the insurance rating for the Fire Protection District. A third party company evaluates the Fire Department; the City's Water Department and the Communication Center. This evaluation occurs every ten years and is based on a scale of 1 – 10, with 1 being the highest rating. The scores are shared with insurance companies, who set insurance rates based on those scores. The Louisville Fire Protection District rating went up (better rating) from 4 to 3. He thanked the City's Water Department for their assistance and the Louisville Fire Protection District Board for their work on this project. The next evaluation will be in 5 years.

City Manager Fleming reported the new score could result in a 20% decrease in insurance premiums.

APPROVAL OF THE CONSENT AGENDA

Council member Leh disclosed he provided legal counsel for Eide Bailly, LLC and recused himself from the vote on Consent Agenda Item 5F. Mayor Muckle moved Agenda Item 5F (Eide Bailly LLC Engagement Letter) to the Business Agenda.

MOTION: Mayor Muckle moved to approve the consent agenda items, seconded by Council member Loo. All were in favor. Absent: Council member Lipton.

- A. Approval of Bills**
- B. Approval of Minutes – July 28, 2015; August 4, 2015**
- C. Approve Resolution No. 53, Series 2015 – A Resolution Approving an Intergovernmental Agreement with the Boulder County Clerk and Recorder for the Conduct and Administration of the 2015 Coordinated Election to be held November 3, 2015**
- D. Approve Resolution No. 54, Series 2015 – A Resolution Approving a Request for a Preliminary Subdivision Plat of Approximately 33.12 Acres into one 30.11 Acre Lot (Lot 1) and One 3.01 Acre Tract (Tract A)**
- E. Approve Resolution No. 55, Series 2015 – A Resolution Approving an Intergovernmental Agreement with Boulder County Concerning the City's Use of the Boulder County Sheriff's Communication Center**
- F. Approve Rescheduling of the September 22, 2015 Study Session**

MOTION: Mayor Muckle moved to approve the Engagement Letter for Auditing Services with Eide Bailly, LLC, seconded by Council member Stolzmann. All were in favor. Council member Leh recused himself from voting. Absent: Council member Lipton.

A. *Authorize Execution of Engagement Letter for Auditing Services with Eide Bailly, LLC*

COUNCIL INFORMATIONAL ITEMS ON PERTINENT ITEMS NOT ON THE AGENDA

Mayor Muckle reported on Money Magazine, who evaluates cities and the best place to live. This year Money Magazine ranked Louisville as 4th in the municipalities of 50,000 and under. This is the 6th time over the past ten years that Louisville has been rated in the top 5. He congratulated the staff and the citizens for making Louisville such a great place to live.

City Manager Fleming congratulated the Council and past Councils for creating the framework and the leadership in concert with the citizens, the advisory boards and staff.

CITY MANAGER'S REPORT

City Manager Fleming expressed this thanks to the Downtown Business Association (DBA) for their sponsorship of the Street Faire over the past 13 years. The DBA Board of Directors voted to not sponsor the Street Faire in 2016. He thanked the DBA and stated they are a tireless volunteer board, which has done an amazing job of sponsoring and coordinating the Street Faire. It has been a great event for Louisville families and for those living outside the City. It has also helped the downtown businesses to thrive.

REGULAR BUSINESS

RESOLUTION No. 56, SERIES 2015 – A RESOLUTION APPROVING A PRESERVATION AND RESTORATION GRANT FOR THE CARANCI HOUSE LOCATED AT 1145 MAIN STREET

Mayor Muckle requested a staff presentation.

Planner I Trice explained the request is for a \$10,134 grant from the Historic Preservation Fund for 1145 Main Street, in Louisville, known as the Caranci House. The home was built in 1908 and has maintained its architectural integrity. The home also has a long social significance associated with the Caranci family.

The preservation and restoration grant is to restore metal casement windows; sill paint removal; repair and paint the front porch, and repair the ceiling stress fracture at the Caranci House, 1145 Main Street. In 2011 the property owners received a \$5,000 focused grant, and are eligible for a \$15,000 flexible grant, with the exception of the paint on the front porch.

Staff recommended a grant request of \$8,445, with an application match of \$8,445 and a contingency of \$1,689 (20%), for a total grant request of \$10,134. The Historic

Preservation Commission held a public hearing on the application on July 20, 2015 and voted 6-0 to recommend the City Council approve the grant application.

Staff Recommendation: Staff recommended approval of Resolution No. 56, Series 2015, approving a Historic Preservation Fund grant of \$10,134 for 1145 Main Street.

COUNCIL COMMENTS

Council member Stolzmann commented this is the first time a new owner of a landmarked property has asked for a grant from the Historic Preservation Fund. She recommended the Council approve Resolution No. 56, Series 2015. She felt it would be consistent with the spirit and intent of the Historic Preservation program.

Council member Keany thanked staff for a very detailed report in the City Council packet and a concise presentation.

Mayor Muckle agreed with Council member Stolzmann, the new owner is planning on doing more work to preserve her historic property.

MOTION: Council member Stolzmann moved to approve Resolution No. 56, Series 2015, seconded by Council member Keany. Roll call vote was taken. The motion carried by a vote of 6-0. Absent: Council member Lipton.

RESOLUTION No. 57, SERIES 2015 – A RESOLUTION APPROVING A REPLAT TO SUBDIVIDE A SINGLE 12,452 SF LOT INTO TWO SEPARATE LOTS IN THE RESIDENTIAL MEDIUM (RM) ZONE DISTRICT, LOCATED AT 1240 LAFARGE AVENUE, LOTS 21-24, BLOCK 1 NICOLA DIGIACOMO ADDITION

Mayor Muckle requested a staff presentation.

Planner II Robinson explained this is a request to subdivide a single lot into two separate lots in the Residential Medium (RM) Zone District, located on the southeast corner of LaFarge and Lafayette. It is a 12,452 SF lot composed of 4 25' X 125' lots. The existing lot contains a 950 SF house and two detached garages totaling 1,000 SF. The replat would retain all structures on Lot 2 and none on Lot 1. The request received the Board of Adjustment approval for lot width and lot area variance, however such approval is not a guarantee on the replat. The City Council must decide whether the request complies with the criteria in Title 16 of the Louisville Municipal Code.

This 12,452 SF property under the Old Town zoning, would allow three units with coverage of about 3,736 SF coverage and 4,358 SF floor area. Under the proposal, Lot 2 would allow 2 units with a lot coverage of 2,450 SF and a total floor area of 2,800 SF. Lot 1 would allow coverage of just over 2,000 SF, 1 unit and approximately 2,400 SF of floor area. The total amount of development would go up in terms of square footage

because of the subdivision of the property however the total of number of units would not change. Lot 2 would total 7,004 SF and Lot 1 would have 5,448 SF. The neighboring lots average approximately 6,848 SF. The new lots would be compatible with the neighborhood. There is no increase in allowed dwelling units. The request complies with the 2013 Comprehensive Plan for this area.

Section 16.15.050 of the Louisville Municipal Code requires 50 foot frontage and a maximum length/width ratio of 2.5. Lot 1 would be 44 feet with a 2.84 ratio. The modifications are allowed for hardship and public good. The Planning Commission unanimously recommended approval of the minor subdivision request.

Staff Recommendation: Staff recommended approval of Resolution No. 57, Series 2015, with no conditions.

APPLICANT PRESENTATION

Andy Johnson, DAJ Design, 922 A Main Street, Louisville, CO stated they have worked with the Planning staff over the past few months. He felt the Planning staff did a great report and presentation. He pointed out the subdivision line was set at 5' south of the existing historic house currently on the property. The applicant wishes the house to remain and although landmarking is not off the table, it is not a part of the plan. He felt it is appropriate for the corner lot to be lower than 7,000 SF as this is one of the largest properties on the block. There was discussion in the two prior board meetings about diversity of lot sizes in Old Town. He noted a four lot property is extremely large for Old Town. If one home was built, it would be a departure from the urban fabric in the neighborhood and in Old Town.

Karla Dakin, 1240 LaFarge Avenue, Louisville, explained she has lived on the property since 1998 and raised her son there. She is a landscape architect and also has a home office on the property. By subdividing the property she could remain in the house and design and build her own garden. She asked Council to consider her proposal favorably.

COUNCIL COMMENTS

Council member Stolzmann asked staff about the floor ratio and the consistency with the Comprehensive Plan. Although she was not opposed to subdividing the property, she did not understand how that could increase the floor ratio. She felt it would take away from the small town feel. Planner II Robinson explained it was a function of the Old Town Overlay District Standards. It has different allowable lot coverages and floor areas based on lot size. The ratios go up as the lots get smaller.

Council member Stolzmann asked if subdividing is increasing the density of the corner. Planner II Robinson stated it is not increasing the density in the sense of number of units, but it is allowing more floor area.

Council member Stolzmann was uncomfortable with the floor area. She stated the applicant is trying to preserve the home and that is why the lot line was drawn further to the south. She questioned why the applicant is not landmarking the property, which would allow the additional coverage. She was hesitant to increase the floor area ratio and questioned the approach.

Mayor Muckle inquired whether three units could be built on the lot. Planner I Robinson confirmed three units could be built.

Mayor Muckle supported landmarking the property, which would control the scale of the two lots. Planner II Robinson explained landmarking would allow them to build bigger houses. Without landmarking they are limited to the standards for Old Town.

MOTION: Mayor Pro Tem Dalton moved to approve Resolution No. 57, Series 2015, seconded by Council member Loo.

Mayor Muckle stated without the landmarking, he would vote against the resolution.

Council member Stolzmann did not see how the increase in the floor area is consistent with the Comprehensive Plan. She supported the existing floor area ratio for the existing home and a 1,515 SF floor area for the second lot. She was not supportive of the resolution as written.

Council member Loo stated her understanding that the applicant does not want to landmark her property and desires to leave the property as is. She understood, by right, the applicant could build more on the property.

Mayor Pro Tem Dalton felt the proposal was consistent with the City's zoning. Council member Stolzmann stated the proposal was not consistent with the zoning.

Council member Keany inquired whether there were any variances on the lots. Planner II Robinson stated the variances received by the Board of Adjustment were for lot width of Lot 1 and lot area on both Lots 1 and 2.

Council member Keany inquired about setback variances. Planner II Robinson stated there were no setback variances.

Council member Leh voiced his support for the resolution.

VOTE: Roll call vote was taken. The motion carried by a vote of 4-2. Mayor Muckle and Council member Stolzmann voted no. Absent: Council member Lipton.

APPROVE CONSTRUCTION SERVICES AGREEMENT WITH CONCRETE EXPRESS, INC. FOR THE LAFAYETTE-LOUISVILLE BOUNDARY AREA DRAINAGE IMPROVEMENTS PHASE 1 CONSTRUCTION

Mayor Muckle requested a staff presentation.

Public Works Director Kowar explained before the Council is a contract with Concrete Express, Inc., in the amount of \$3,569,145.87 and a \$400,000.00 staff controlled contingency fund. This contract is with the Urban Drainage and Flood Control District and the City of Lafayette for drainage improvements, which will ultimately perform flood plain mitigation for downtown Louisville and areas along the Lafayette – Louisville Boundary. This is the first phase of the Project, which will build a large channel east of Highway 42 through the open space to the Coal Creek Area. The channel and associated drop structures include trail replacement and three bridges and urban flood control and drainage in the future. The second phase of the project is in the process of working through easements with property owners. The second phase is only Louisville improvements from Highway 42 west into the downtown area.

Staff Recommendation: Award the construction agreement to Concrete Express, Inc., in the amount of \$3,569,145.87 and authorize staff to contract addenda up to \$400,000.00 for additional work and project contingency, as well as authorize the Mayor and City Clerk to sign and execute contract documents on behalf of the City.

Council member Keany asked if the trails would be hard or soft surface. Public Works Director Kowar stated they would remain soft surface. He noted the Open Space Division had reviewed and approved this phase of the plan.

MOTION: Council member Keany moved to approve the Construction Services Agreement with Concrete Express, Inc., in the amount of \$3,569.145.87, seconded by Council member Loo. Roll call vote was taken. The motion carried by a vote of 6-0. Absent: Council member Lipton.

PUBLIC HEARING – 550 SOUTH MCASLIN URBAN RENEWAL PLAN

- 1. RESOLUTION No. 58, SERIES 2015 – A RESOLUTION APPROVING THE 550 SOUTH MCCASLIN URBAN RENEWAL PLAN, DESIGNATING SUCH AREA AS APPROPRIATE FOR URBAN RENEWAL PROJECTS PURSUANT TO THE 550 SOUTH MCCASLIN URBAN RENEWAL PLAN, AND FINDING THAT THE ACQUISITION, CLEARANCE, REHABILITATION, CONSERVATION, DEVELOPMENT, REDEVELOPMENT OR A COMBINATION THEREOF OF SUCH AREA IS NECESSARY IN THE**

**INTEREST OF THE PUBLIC HEALTH, SAFETY, MORALS, AND WELFARE
OF THE CITIZENS OF THE CITY OF LOUISVILLE**

**2. RESOLUTION No. 59, SERIES 2015 – A RESOLUTION APPROVING AN
AMENDED AND RESTATED COOPERATION AGREEMENT BETWEEN THE
CITY OF LOUISVILLE AND THE LOUISVILLE REVITALIZATION
COMMISSION**

Mayor Muckle requested a City Attorney introduction.

City Attorney Light reviewed the two action items: 1) Resolution No. 58, Series 2015, which approves an Urban Renewal Plan (UR Plan) for 550 S. McCaslin Blvd, the former Sam's Club Property. He stated the UR Plan for 550 South McCaslin Boulevard, designates such area as appropriate for urban renewal projects and finds the acquisition, clearance, rehabilitation, conservation, development, redevelopment or a combination thereof of such area is necessary in the interest of the public health, safety, morals, and welfare of the citizens of the City of Louisville. 2) Resolution No. 59, Series 2015, which approves amendments to the Cooperation Agreement between the City of Louisville and the Louisville Revitalization Commission (LRC).

Mayor Muckle opened the public hearing and requested a staff presentation.

Economic Development Director DeJong reviewed the actions to date as follows: The City Council directed a Conditions Survey in May 2014. The Conditions Survey was completed in July of 2014. The Council determined the property blighted in October 2014 through Resolution 60, Series 2014. In January of 2015, the City Council directed staff to prepare a UR Plan.

The LRC reviewed the draft UR Plan June 2015 and the City conducted a Public Q & A meeting on July 6, 2015. The Planning Commission reviewed draft UR Plan July 9, 2015 and approved Resolution 23, Series 2015 finding the UR Plan in conformity with the Comprehensive Plan. Notices were sent to Property Owner and businesses, Boulder County, Boulder Valley School District (BVSD) and were published in the Daily Camera on July 14, 2015.

The proposed UR Plan is intended to reduce, eliminate and prevent the spread of blight within the urban renewal area at 550 S. McCaslin, the former Sam's Club. The objectives for the Plan include: To create a retail rich environment where area businesses and residents can be successful; re-tenant or redevelop the property and increase retail activity by encouraging occupancy of the property.

UR Plan: Conformity with the Comprehensive Plan. The Comprehensive Plan states the McCaslin Urban Center shall: 1) Serve as the focal point for a regionally significant commercial activity center. 2) Remain the City's primary retailing center supported by a mix of land uses including retail, office and residential. The Planning Commission reviewed the UR Plan and found it to be in conformity with the Comp Plan.

Mr. DeJong stated Sam's Club closed January 2010. It is a 13 acre property containing a 128,000 sf vacant building. A new owner purchased the property in January 2014. Several concerns arise from the vacancy: Reduces the viability of adjacent properties that could contribute to neighborhood decline and weaken the McCaslin Corridor.

Mr. DeJong reviewed the conditions survey finding the following blight factors are present: 1) The existence of health, safety, or welfare factors requiring high levels of municipal services or substantial physical underutilization or vacancy of sites, buildings, or other improvements. 2) Defective or unusual conditions of title rendering the title non-marketable. 3) Faulty Lot Layout 4) Deterioration of site or other improvements.

Blight Factor 1): Substantial Physical Underutilization or Vacancy of Buildings or Sites: Underutilized property; parking lot sits mostly empty during normal business hours; community church uses property during only a small portion of the week; high profile location at gateway into Louisville from US 36 and one of the main anchor retail properties in the shopping area.

Blight Factor 2): Defective or unusual conditions of title rendering the title non-marketable: Developed in 1990s as part of a retail center; restrictive covenants put in place at time of development to limit competition between tenants and sharply limit entertainment uses and limits several other uses.

Restrictive Covenants: No general merchandise discount department store other than on Lot 2; No supermarkets other than on Lot 1; Other lots can have less than 5,000 sf devoted to retail sale of food for off-premise consumption; Only Lot 2 may have an optical center; Pharmacy only on Lots 1 and 2; No more than 2 banks, unless banking is incidental to the primary use; Only one fuel station and only one drive-thru restaurant selling hamburgers or ground beef products. More broad restrictions were put in place during sale from Sam's Club to current owners after the store closed (owner can buy out restriction): No stores selling a range of merchandise "at a discount" allowed, the use for which the site was originally developed thus viable tenants who would fully utilize the property would likely be prevented from doing so.

Blight Factor 3) Faulty Lot Layout: Lot configuration results in former Sam's Club building being narrow and deep with respect to the front entrance, rather than shallow and wide; The building orientation makes it difficult to partition effectively; resulting spaces would be too narrow and deep for adequate retail layout and other non-retail uses that might be compatible with a deep, narrow layout are prohibited.

Blight Factor 4): Deterioration of Site and Other Improvements: Facility is 127,000 square feet with a 600+ car parking lot, requiring significant upkeep expenses; currently only used during a small portion of the time by a community church, which does not

generate the revenue needed for full maintenance (Potholes, cracked parking curbs, and other signs of lower maintenance levels are evident).

Blighting factors continue to limit potential for redevelopment or re-tenanting the building. The Urban Renewal Plan outlines the tools available to address the blighting factors. Approving a plan must follow rules in state statute. The Planning Commission reviewed the conformity with the Comprehensive Plan.

Mr. DeJong reviewed various provisions of the UR Plan.

Power of Eminent Domain: The UR Plan authorizes LRC to use eminent domain only as authorized by the Urban Renewal Law to alleviate qualifying conditions; only for property within the Urban Renewal Area and only after affirmative 2/3rds vote by the City Council.

Redevelopment Agreements: The LRC is authorized to negotiate and enter into redevelopment and cooperation agreements. The LRC will develop a process to evaluate redevelopment agreements.

UR Plan Tools for LRC: Develop and approve a project description; Issue RFP to solicit proposals for redevelopment (such proposals could come from any interested parties including the property owner, interested retailers and/or developers); negotiate a proposed redevelopment agreement and submit the proposed redevelopment agreement to City Council for approval and if approved by City Council, execute the redevelopment agreement.

Elements of an RFP: An RFP would ask for proposals specifying: Improvements planned for the site; proposed uses and activities; time frames for completing the proposed redevelopment actions; requested City financial assistance, if any, such as sales tax rebates; how costs (including potential legal costs) would be financed.

The UR Plan Does Not: Authorize use of tax increment financing pursuant to Section 31-25-107(9), C.R.S. and the use of tax increment financing within the Plan Area can only be authorized by amendment to this Plan. This Plan does not change the allowed uses of the property or approve any redevelopment plans. Change of use and redevelopments must go through the City's approval processes.

He outlined options to address continued vacancy at 550 S. McCaslin:

- 1) Continue to encourage property owners to resolve issues; expect private parties to identify a use for the existing building that complies with existing zoning and satisfies the private restrictive covenants, either in their current form or through covenant changes agreed on by the private owners.

- 2) Consider rezoning the property to allow for a wider range of uses beyond what is currently allowed. Rezoning may be initiated by the Owner, Planning Commission, or City Council. Rezoning is subject to separate public hearing procedures and would

be a quasi-judicial action; Council should not discuss the substance or merits of a rezoning as part of this agenda item.

3) Encourage a retail use by addressing the blighting factors through an Urban Renewal Plan. The LRC would develop and approve a project description; issue RFP to solicit proposals for redevelopment, such proposals could come from any interested parties including the property owner, interested retailers and/or developers. Negotiate a proposed redevelopment agreement. Submit the proposed redevelopment agreement to City Council for approval and if approved, execute the redevelopment agreement.

Cooperation Agreement: City and LRC have an agreement first approved in 2006 and amended in 2011. The proposed changes to reflect multiple UR Plan areas in the City are as follows;

1) Section 5.c and 5.d to confirm City Council approval of redevelopment agreements. 2). Section 10 to clarify any UR Plan Area is covered by the Agreement. 3) Section 16 to reflect LRC's bylaws have been revised. 4) Section 4.a revised to update Costs and Expenses balance (Small amount of expenses not paid at end of 2014 were paid in early 2015).

Staff Recommendation: Staff recommended Council approve Resolution No. 58, Series 2015, which approves the 550 S. McCaslin Urban Renewal Area and Resolution No. 59, Series 2015, the approval of the Amended and Restated Cooperation Agreement between the City of Louisville and the Louisville Revitalization Commission.

COUNCL COMMENTS

Council member Leh expressed his thanks to the City staff for their work and the presentation. He inquired about a reference in the 550 South McCaslin Urban Renewal Plan relative to the small area plan and asked if it was staff's intent to include the urban renewal plan in the McCaslin Small Area Plan. Economic Development Director DeJong confirmed it was staff's intention to include in the urban renewal plan reference to the small area plan. Staff wants the ability for the urban renewal plan to adjust to the results of the small area plan and to encourage the desired redevelopment in the area, should the small area plan encourage such redevelopment.

Council member Leh inquired about 2.7.2 of the plan, which states "It is the intent of this Plan that LRC "shall" exercise all such powers as may now be possessed or hereafter granted to LRC for the elimination of qualifying conditions within the Plan Area". He was concerned about the mandatory language of "shall" to exercise their powers. He inquired about the purpose for requiring mandatory language.

City Attorney Light noted he and Special Counsel Malcolm Murray were available to respond to Council's questions. He explained the word "shall" expresses the intent of

the plan the City Council is adopting is to authorize powers and that the implementation of the plan will require a number of discretionary decisions by both the City Council and the LRC. There will be decisions on what projects look like, the RFP process and cooperation agreements. Any agreement must be approved by the City Council in addition to the LRC. The "shall" language allows the LRC to accomplish various items but the UR Plan is not a mandate. He suggested the language could be revised to clarify that intent.

Council member Leh addressed Section 12 of the cooperation agreement, and asked for clarification that the Mayor is a member of the LRC. It was clarified Mayor Muckle is a member of the LRC. Council member Leh asked City Attorney Light for the capacity in which the Mayor serves on the LRC. City Attorney Light explained the Mayor is serving as a member of the Louisville Revitalization Commission. The organizing documents of the LRC, as stipulated by the state statutes, require the Mayor or a member of the Council shall be a member of the LRC. In 2006 the documents did not stipulate the Mayor or member of Council be a member of the urban renewal board so that provision was included in the original cooperation agreement and that change has since been implemented.

Mayor Muckle stated this building has remained vacant for a number of years and it has blighted the area. There are a number of options for changing this area and a lot of effort has been expended to try to utilize the building. Previous brokers, the current owner and staff members have all tried to market the property. One option would be to create an urban renewal plan. Council is looking at this option.

PUBLIC COMMENTS

R.C. Hanisch, 4643 S.Ulster, Suite 1300, Denver, CO, representing McDonald's, requested his letter objecting to the urban renewal plan be included in the public record. It was confirmed the McDonald's letter was included in the public record.

Jonathan Bergman, Davis, Graham and Stubbs, LLP, 1550 17th Street, Suite 500, Denver, CO, explained his firm represents Albertsons. They also submitted a letter, on behalf of Albertsons, noting various objections to the plan. Albertsons objects to the urban renewal plan because, in its view, it constitutes an improper and unlawful taking of property rights, which he said is Albertsons valuable use restriction on the former Sam's Club site. Their concerns included a blight study, without notice provided to Albertsons or the neighboring businesses. He addressed their public records request, which obtained information provided by the City staff. He noted before the Sam's Club property was sold to the current owner, there were discussions about offers to assist in removing the use restrictions on the property. He stated they have concerns about the process and some of the intentions of what may happen. He reported attending a meeting where a citizen asked the identity of the tenant for the site. Mr. DeJong's response was the tenant wanted to remain confidential. He questioned why the information had to be confidential. Albertsons concern is a competitor is intended for

the property. He noted Albertsons had planned to renovate the store earlier this summer, but in light of the proposed urban renewal plan, they have put the renovation on hold. If the Urban Renewal Plan does not go forward, Albertsons will go forward with the renovation. Albertsons wants a solution that could be a potential win/win for the community. Albertsons has been a partner in Louisville for 20 years and wants to continue in that role. They hope the resolution is rejected.

Council member Lipton arrived to the meeting at 8:12 p.m.

Richard Hill, Owner and Operator of McDonald's, 939 Dillon Road, Louisville, CO, stated he started as a crew person at McDonald's 44 years ago. His wife does all the office work, and his daughter is the supervisor. He bought the Louisville McDonald's restaurant in 2009 and noted restrictions on the property that there would be no other direct competitors. He stated any other competitors would be detrimental to his business and requested the City Council to keep the exclusion in place.

COUNCIL COMMENTS

Mayor Muckle emphasized this plan does not make any decisions on what will happen on the property. There may be different decisions on what might or might not change with respect to the covenants. There are different outcomes of what the urban renewal authority might do, once Council gives them the authority to work on the project. He stated it is about the tool and not the outcome.

Mayor Pro Tem Dalton stated he would be consistent in this process. He voted no on the finding of blight, because he disagreed there was blight. He stated nothing has changed since last October to change his point of view. He did not agree with the use of eminent domain and because it is part of the urban renewal plan, he would vote no.

Council member Stolzmann stated the old Sam's Club site has blighted the City for many years. This has been a long process for present and past Councils. She did not feel the Council was rushing into a decision. This has been concerning to the citizens. The blight of the property has hurt other property owners and businesses to have a large vacant building and it also hurts morale. People want the Council to do something so this is a case where they want the City to intervene in the private sector. It does not have to be done in a negative or argumentative way. The City has letters from the tenants and owners of the property saying they have no objection to the use of urban renewal to remove the blight. She felt the urban renewal tool is appropriate to use in this case. She noted there were some concerns raised and requested more information on the following: 1) a reference made by Mr. Bergman, Albertsons attorney, stating Albertsons did not receive any offers to remove the restricted covenants on their property. 2) Open communication about a prospective tenant. 3) The open records request relative to staff making offers to the potential buyer about removing the

covenants before they purchase of the property. She felt urban renewal was an appropriate tool for this property and the community is interested in filling the space.

Council member Leh asked Mr. Bergman about the statement in his letter, which states Albertsons is prepared to institute a civil action, pursuant to Colorado Civil procedures to challenge the legality of the proposed plan, should it be adopted and will vigorously oppose the unconstitutional exercise of eminent domain powers to transfer properties from one private owner to another at the cost of Albertsons property interests and the restrictions. He asked if Albertsons position is that the mere adoption of the plan is a significant legal predicate to bring forward a civil action. Mr. Bergman stated it is certainly Albertsons position it is within their legal rights to challenge the adoption of the plan and referred to the Cooperation Agreement where the mandatory language of "shall" was used. He stated he is authorized to say Albertson's is prepared to challenge the plan if it is adopted. He stated Albertsons prefers to reach a mutually beneficial resolution that does not require taking Albertsons property rights and the installation of a competitor immediately next door.

Council member Leh asked Mr. Bergman if he agreed the adoption of the plan is not the exercise of eminent domain power. Mr. Bergman stated he was not prepared to concede that point as it takes away Albertsons ability to file a lawsuit.

Council member Leh voiced his concern over the intentions and the suggestion of a potential plan on the part of the City. He stated it is important to know the City Council has not made any decisions and the only thing on the table is the adoption of the urban renewal plan and the cooperation agreement.

Mr. Bergman stated Albertsons agrees and referred to Council member Stolzmann's question. He explained Centennial Investments was one of the purchasers of the former Sam's Club site, which closed in January or March of 2014. A letter, dated January 6, 2014, from City Manager Fleming, stated "the City is exploring all options to allow the purchase of the property without the use restrictions". Mr. Bergman stated it is likely the use restrictions were placed by Sam's Club for the sale of the property and noted those use restrictions can be removed by the new owner for a payment. Albertsons feels this is being sidestepped by the new owner. The letter also states "the City staff and I are willing to recommend to the City Council, actions to alleviate these factors (he felt it was a reference to other restrictive use covenants favoring neighboring properties) if it would result in appropriate new tenants for the property". He noted Albertsons has concerns about what has transpired between the City and the owner of the property.

City Attorney Light requested Mr. Bergman provide a copy of the letter to the City Clerk so it could be made part of the record.

Council member Stolzmann asked Economic Development Director DeJong if the urban renewal plan, which includes requests for proposals to purchase or buy out the use

restrictions and negotiating the restrictive covenants, would preclude the current owner from buying out the use restrictions from Sam's Club. Economic Development Director DeJong explained the property owner could still buy out the use restrictions or negotiate the restrictive covenants with Sam's Club. It would be part of the proposal for the property.

City Manager Fleming asked Mr. Bergman to confirm Albertsons has plans for renovations. He explained the staff met with Albertsons on July 10th and City Manager Fleming specifically asked if there were any plans for the property and Lynn Miller, the Senior Real Estate Manager for Albertson's, stated they might consider a facelift for the property. He asked if Council should be interested in adopting the urban renewal plan, and if the LRC exercises the options to request proposals, would Albertson's submit a proposal in response to the RFP, which would give specific details on what Albertson's is proposing. Mr. Bergman asked if City Manager Fleming was inquiring about a renovation or whether Albertsons is prepared to make an offer to purchase the Sam's Club property.

City Manager Fleming asked if Albertsons is interested in submitting a proposal on the proposed renovation of the Albertsons store in the context of an RFP so the LRC and ultimately the City Council can evaluate their proposals against potentially other proposals, which might come forward through the RFP. Mr. Bergman stated he did not believe the two sites were joined. His statements were designed to identify the uncertainty in the business community that this type of resolution is creating. Albertsons was willing to go forward with a renovation of its store. There is uncertainty as to the status of the store, in light of potential actions that may be taken, as a result of the urban renewal plan. In light of the potential actions, Albertsons is not prepared to go forward with renovations to its store.

Council member Loo asked Mr. Bergman if there are renovations plans for Albertsons. Mr. Bergman stated Albertson recognizes the need for renovation and was prepared to go forward, but in light of the uncertainty created by the urban renewal plan, they are not prepared to go forward with renovations at this time.

Council member Loo was concerned Albertsons would not show any renovation plans if the City Council passes the urban renewal plan. Mr. Bergman stated if Albertsons had some assurance the use restriction for a grocery store on the adjacent property would be preserved and not taken away, Albertsons would undertake the renovations. They are prepared to engage in meaningful discussion to reach an agreement.

City Attorney Light explained the action on the plan does not require or initiate any condemnation of property. He stated future steps include if the LRC decides to develop a project description for an RFP to obtain proposals from persons who might be interested, or have some level of interest, in participating in the project. He stated the adoption of the plan neither initiates nor requires the use of eminent domain. He

stated the issues of whether Albertsons has a right to challenge the UR Plan will not be resolved this evening.

City Attorney Light entered the following into the record: The plan does not require or initiate condemnation proceedings. Prior to the consideration of Resolution No. 60, Series 2014, making the blight finding, the City provided public notice, including publication and mailings to the property owners and tenants. Notice was provided twice; which is more than required by the statute. He pointed out in the condition survey and the resolution of approval; there were four conditions of blight found within the property. The Urban Renewal law provides if there is no objection by the property owners or tenants or owners of businesses concerned within the proposed urban renewal area, to the inclusion of the property within a blighted area and a plan, the plan can be adopted when only one factor exists. He noted the property owners provided consent letters to the property being included in a blighted area.

Council member Leh suggested a motion to continue the public hearing to the September 1st, 2015 City Council meeting. Council member Lipton apologized for being late. He agreed with Council member Leh's suggestion to continue the public hearing. In light of Albertsons attorney's contention the City may be subject to some form of litigation by adopting the urban renewal plan, he requested legal advice on the risks prior to the next meeting.

Council member Keany was not opposed to continuing this matter. If continued he requested the Council conduct an executive session before the next Council meeting and include the City Attorney and Special Counsel.

Council member Loo stated Council member Stolzmann's questions and comments were good, and requested they be addressed before the next meeting.

Mayor Muckle stated his intention was to take public comment this evening and continue the public hearing to the next meeting. He agreed an executive session would be time well spent. He supported a motion for continuance and executive session.

Council member Stolzmann supported a win/win/win solution of private property owners winning together and also the members of the public not having a blighted building. She encouraged private property owners to get together and discuss this matter.

Council member Leh voiced his appreciation to the representatives from Albertsons and McDonalds and for this evening's discussion. He did not feel the Council was in a position to concede the adoption of the plan creates a condemnation tool. Urban renewal puts a plan in place to revitalize the area. He had no doubt the actions taken were appropriate. He felt as public officials, they have a duty to explore different alternatives and make sure they have the right information. He felt gathering public comment and additional information is worth keeping the public hearing open and would not prejudice the process. He supported an executive session.

MOTION: Council member Leh moved to continue the public hearing on Resolution No. 58 and No. 59, Series 2015 to the September 1st City Council meeting, seconded by Mayor Muckle. All were in favor.

Council member Keany requested a special meeting be called to conduct an executive session prior to the September 1st meeting or an executive session be called before the regular City Council meeting on September 1st. City Attorney Light wanted to ensure special counsel would be available for a special meeting. Special Counsel Malcolm Murray stated he would be unavailable until September 1st.

City Attorney Light recommended a motion to approve a special meeting on September 1st at 6:00 p.m. for an executive session for the purpose of consulting with attorneys representing the City.

Council member Stolzmann asked the City Attorney and Special Counsel to contemplate any pending litigation before the next meeting and advise the Council.

MOTION: Mayor Pro Tem Dalton moved the City Council call a special meeting on September 1st, 2015, at 6:00 p.m. for an executive session, to consult with attorneys representing the City, seconded by Mayor Muckle, All were in favor.

CITY ATTORNEY'S REPORT

No items to report.

COUNCIL COMMENTS, COMMITTEE REPORTS, AND IDENTIFICATION OF FUTURE AGENDA ITEMS

Council member Loo was not clear on the Coyote Run report and asked what the next steps would be. Council member Stolzmann suggested this be discussed at a future study session. City Manager Fleming requested the City Attorney outline the next steps. City Attorney Light explained he is examining the questions relative to the various duties and risks the City has as the property owner of the open space.

Council member Stolzmann addressed an email from Mark Persichetti, from RCAB, on recycling and what role the City would take. She requested this be a future agenda item. Deputy City Manager Balser asked if this could be discussed at a study session with the Sustainability Board. Council member Stolzmann stated Mr. Persichetti asked for direction, so it would have to be at a regular meeting. City Manager Fleming stated it has been scheduled for the February 23, 2016 City Council Study Session.

Mayor Muckle reminded the public of the Chamber of Commerce Pints in the Park event which will be held Saturday, August 29th. Tickets can be purchased at the Chamber's office.

Council member Leh commented on the DBA decision to no longer sponsor the Street Faire. He felt the event provided tremendous economic opportunities for the City. He stated there were issues around the Street Faire, but a lot of people want it to continue. He was interested in putting all the facts on the table and getting a plan in place for next year. Mayor Muckle agreed and felt there should be a community discussion.

ADJOURN

MOTION: Mayor Muckle moved for adjournment, seconded by Mayor Pro Tem Dalton. All were in favor. The meeting adjourned at 8:58 p.m.

Robert P. Muckle, Mayor

Nancy Varra, City Clerk